

FILED
JUL 31 2009
[Signature]

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

CHRIS HOLSCHER,

Civil No. 09-1011

Plaintiff,

COMPLAINT

v.

VALLEY QUEEN
CHEESE FACTORY, INC., and
VALLEY QUEEN CHEESE
FACTORY, INC. HEALTHCARE
BENEFIT PLAN

Defendants.

Plaintiff Chris Holscher for his Complaint against Defendants for denial of healthcare benefits states and alleges as follows:

1. This action arises under the Employee Retirement Income Security Act (ERISA) and more particularly 29 U.S.C. § 1132(a)(1)(B) of said Act.
2. 29 U.S.C. § 1132(e)(1) gives this Court jurisdiction of this matter and venue is proper pursuant to 29 U.S.C. § 1132(e)(2).
3. Plaintiff Chris Holscher resides in Brown County, South Dakota.
4. Valley Queen Cheese Factory, Inc. is a South Dakota corporation with its principal place of business in Milbank, Grant County, South Dakota, and is the “employer” [as defined by 29 U.S.C. § 1002(5)] and plan “administrator” and “plan sponsor” [as defined by 29 U.S.C. § 1002(16)] of the Valley Queen Cheese Factory, Inc. Healthcare Benefit Plan.

5. The Valley Queen Cheese Factory, Inc. Healthcare Benefit Plan is a qualified employee benefit plan under ERISA laws.

6. At all times material hereto plaintiff Chris Holscher was an "employee" [as defined by 29 U.S.C. § 1002(6)] of Valley Queen Cheese Factory, Inc. and was a "participant" [as defined by 29 U.S.C. § 1002(7)] in the Valley Queen Cheese Factory, Inc. Healthcare Benefit Plan.

7. On or about October 3, 2003, while working at the Valley Queen plant in Milbank, Grant County, South Dakota, plaintiff Holscher sustained injuries, including injuries to his respiratory system, as a result of a chemical spill.

8. As a result of his injuries, plaintiff Holscher was hospitalized and obtained other medical treatment, and incurred medical expenses in an amount not yet determined but believed to be in excess of \$115,000, including without limitation the following approximate amounts:

a.	Anesthesia Physicians Ltd.	\$ 2,400
b.	Medical X-Ray Center.....	670
c.	North Central Hearth Institute	665
d.	Midwest Ear, Nose & Throat.....	10,689
e.	Avera McKennan Hospital	88,129
f.	Surgical Institute of SD.....	3,381
g.	Dr. Robert Crank.....	279
h.	SC—Pulmonary Medicine.....	249
i.	LCM Pathologists	122
j.	Sanford USD Medical Center.....	7,830
k.	Sanford Home Medical Equipment	632

9. Plaintiff Holscher has further incurred interest and service fee charges on said medical expenses.

10. Plaintiff Holscher pursued a claim for workers' compensation benefits against Valley Queen Cheese Factory, Inc. and its workers' compensation insurer, but said workers' compensation benefits were denied based upon SDCL 62-4-37, and said denial of benefits was affirmed by the South Dakota Supreme Court in the case of *Holscher v. Valley Queen Cheese Factory*, 2006 S.D. 35, 713 N.W.2d 555.

11. Claims for benefits under the Healthcare Benefit Plan were timely submitted by plaintiff Holscher or on his behalf.

12. Defendants denied said claims for benefits under the Healthcare Benefit Plan, relying upon an exclusion in the Healthcare Benefit Plan which states:

Occupational. Charges for or in connection with any injury or illness arising out of or in the course of any occupational activity wherein the Participant is required, by state law, to be covered by workers' compensation insurance.

13. The basis relied upon by Valley Queen Cheese Factory, Inc. in denying plaintiff Holscher's claims is erroneous, as Mr. Holscher was not "required" by South Dakota law to be covered by workers' compensation "insurance".

14. Pursuant to SDCL 62-5-2, an employer "may" but is not required to secure the payment of compensation to employees by insuring and keeping insured the payment of such compensation with any stock corporation writing workers' compensation insurance.

15. Pursuant to SDCL 62-5-5, instead of obtaining workers' compensation insurance, an employer has the option of self-funding workers' compensation coverage.

16. Pursuant to SDCL 62-5-7, instead of obtaining workers' compensation insurance, an employer further has the option to elect to not operate under the protection of workers' compensation laws.

17. Defendants' denial of benefits due to plaintiff Holscher under the Healthcare Benefit Plan was and is arbitrary, capricious, not made in good faith, unsupported by substantial evidence, erroneous as a matter of law, in violation of ERISA, and a breach of the terms of said plan.

18. Defendants operated under a conflict of interest in denying benefits to plaintiff Holscher.

19. As the direct and proximate result of defendants' actions, plaintiff Holscher has suffered damages in the amount of medical expenses that should have been paid under the Healthcare Benefit Plan, including those expenses identified in paragraph 8 of this complaint, plus interest and service charges.

20. As the direct and proximate result of defendants' actions, plaintiff Holscher has incurred and will continue to incur attorney's fees and litigation expenses.

WHEREFORE, plaintiff Holscher requests relief against defendants as follows:

1. An Order for defendants to accept and pay as eligible claims all medical expense claims submitted by or on behalf of Christopher Holscher for the time period in which Holscher was a plan participant, plus interest and service charges.

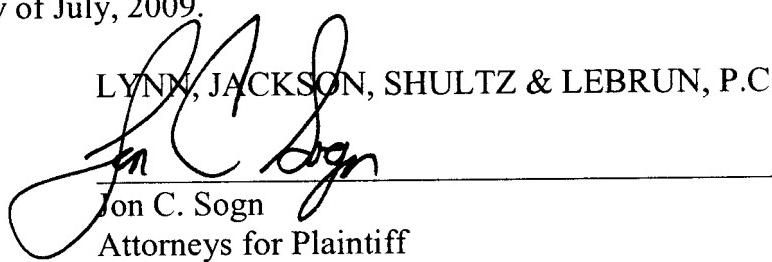
2. Judgment awarding Holscher damages for all benefits due to Holscher under the terms of the Healthcare Benefit Plan, plus interest and service charges.

3. Judgment awarding Holscher attorney's fees and costs of this action.

4. Such other relief as the Court deems appropriate.

Dated this 31st day of July, 2009.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.



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